

No. 82-1167



In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

BRADLEY THOMAS JACOBSEN and DONNA MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

MARK W. PETERSON
Suite 500 Builders Exchange
609 Second Avenue South
Minneapolis, Minnesota 55402
(612) 339-1431

PETITION FOR A WRIT OF CERTIORARI FILED JANUARY 12, 1983
CERTIORARI GRANTED MARCH 7, 1983

TABLE OF CONTENTS

	Page
District Court Docket Entries	1
Transcript of Suppression Hearing	4
Trial Testimony of James L. Lewis	61
Trial Testimony of Jerry J. Kramer	70
Order Allowing Certiorari	76

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1167

UNITED STATES OF AMERICA, PETITIONER

v.

BRADLEY THOMAS JACOBSEN and DONNA MARIE JACOBSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

RELEVANT DOCKET ENTRIES

JACOBSEN, BRAD THOMAS

5-4-81

DATE	PROCEEDINGS
5-8-81 1)	INDICTMENT (Bond made 5-4-81 \$1000 surety by Allied Fidelity Ins. Co. Judge MacLaughlin Assignment 468 on the Master Criminal List.
5-14-81 2)	ARRAIGNMENT before Magistrate Boline. Plea of Not Guilty entered to all counts.
5-21-81 6)	MINUTES OF PROCEEDINGS before Magistrate Boline. Defendant's oral motion for continuance, granted. Defendant's motion for disclosure of intercepted wire or oral communications, motion to suppress, motion to permit inspection of grand jury minutes, mo-

DATE	PROCEEDINGS
	tion for notice of other offenses and motion for discovery and inspection—argued, submitted and taken under advisement.
5-26-81 6a)	MIN. OF PROCEEDINGS before Mag. Boline—Cont. hearing deft. suppression mo, argued, submitted and taken under advisement.
6-24-81 10)	REPORT AND RECOMMENDATION of Magistrate Boline that the defendant's Motion to suppress should be denied.
6-29-81 12)	OBJECTION OF THE DEFENDANT to the Report and Recommendation of Magistrate Boline.
7-6-81 13)	REPORTERS TRANSCRIPT OF PROCEEDINGS HELD 5-26-81 BEFORE MAGISTRATE BOLINE. (Wicklander-R.) (Partial Transcript)
7-21-81 (14)	REPORTERS TRANSCRIPT OF PROCEEDINGS Held 5-26-81 (Partial Transcript on Suppression Hearing, other in Item 13)
7-22-81 14)	ORDER (MacLaughlin, J.) that the defendant's objections to the Report and Recommendation are overruled, the report and recommendation as supplemented herein is adopted, and the defendant's Motion to Suppress is denied.
	24) VERDICT OF GUILTY [Brad Jacobsen] to Count I, II and III of the Indictment. VERDICT OF GUILTY [Donna Jacobsen] to Count I and III of Indictment.
10-16-81 30)	SENTENCE IS IMPOSED [Brad Jacobsen]: (MacLaughlin, J-Stafford, R.) Count I. Imprisonment for 12 months; special parole term of 3 years. Count II; Imprisonment for 6 months, consecutive to sentence on Count I. Count III; imprisonment for 12 months, concurrent with sentence on Count I. Informed of right to appeal. Execution of sentence is stayed until Monday, October 26, 1981, at which time the defendant shall surrender to the U.S. Marshal's Office in Minneapolis, Min-

DATE

PROCEEDINGS

nesota. If a timely appeal is filed the execution of the sentence shall be stayed pending appeal to the Eighth Circuit Court of Appeals.

10-16-81 35) SENTENCE IS IMPOSED [Donna Jacobsen]: (MacLaughlin, J-Stafford, R.) Court finds that the defendant will not benefit under Federal Youth Corrections Act. As to Count I. Imprisonment for 12 months and on condition that the defendant be confined in a jail type institution for 3 months, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for 3 years. Special parole term of 3 years. As to Count III: imprisonment for 12 months and on the condition that the defendant be confined in a jail type institution for 3 months, the remainder of the sentence of imprisonment is hereby suspended and the defendant placed on probation for 3 years. Sentence on Count III to run concurrently with sentence as to Count I. The defendant informed of right to appeal. Court recommends the Hennepin County Adult Corrections Facility as the place for service of the sentence. Court recommends Hennepin County Adult Corrections Facility as the place for service of the sentence. Court recommends Henn. County Adult Correction Facility. Sentence execution stayed to Monday, Oct. 26, 1981. If timely appeal filed execution of sentence will be stayed pending appeal.

ISSUED Jdgt. and Commitment and dlvd. two c/c to U.S. Marshal two c/c to U.S. Probation, one c/c to U.S. Attorney and one c/c to U.S. Bureau of Prisons.

10-26-81 36) NOTICE OF APPEAL Receipt 20927

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Cr. No. 4-81-53

UNITED STATES OF AMERICA, PLAINTIFF

vs.

DONNA JACOBSEN and BRAD JACOBSEN, DEFENDANTS

HEARING ON SUPPRESSION MOTIONS

Before:

HON. FLOYD E. BOLINE,
United States Magistrate

Minneapolis, Minnesota

May 26, 1981

. . . .

[2] APPEARANCES:

On Behalf of the Government

John Lee
Assistant United States Attorney
Minneapolis, Minnesota

On Behalf of the Defendant Donna Jacobson

Mark Peterson, Esq.
Minneapolis, Minnesota

On Behalf of the Defendant Brad Jacobson

Earl Gray, Esq.
Minneapolis, Minnesota

Defendants Donna Jacobson and Brad Jacobson
present

JAMES LEWIS

called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEE:

Q Would you state your name, please?

A James Lewis, L-e-w-i-s.

Q Your occupation?

A Special agent, Drug Enforcement Administration.

[3] Q And are you assigned locally?

A Yes.

Q How long have you been a Drug Enforcement Administration agent?

A Eight years.

Q Agent Lewis, directing your attention to May 1, 1981, did you have occasion on that date to participate in an investigation involving Brad Jacobson?

A Yes.

Q And could you tell me did you determine in the course of the investigation the place of his residence?

A Yes.

Q And what did you determine in that regard?

A It was 7300 West I believe 135th Street.

Q And is that in the metropolitan area?

A Apple Valley, yes.

Q Did you go to that location that day?

A Yes.

Q Could you tell us what's located there?

A A single family residence.

Q Do you remember approximately when you would have first gone to that location on May 1?

A We arrived in the area about 2:30, 2:40.

Q In the afternoon?

A Yes.

[4] Q Prior to arriving in the area at that time, had you been in contact with other agents?

A Yes.

Q At or about 2:40, did you meet with other agents at this location or close to it?

A Yes, I did.

Q And what occurred at that time?

A We basically had an informal meeting as to what was going to occur that afternoon.

Q And did that meeting involve any documents such as a search warrant?

A Yes.

Q And could you tell me where you would have first observed a search warrant, who had it?

A I first observed the search warrant at the corner of Cliff Road and Cedar I believe, and Special Agent Hait had it.

MR. GRAY: Sir, would you speak up? I can't hear you. I didn't hear you at all, as a matter of fact.

THE WITNESS: I first observed the document at Cedar and Cliff Road, and Special Agent Hait had it.

BY MR. LEE:

Q Do you recall what the document specified be searched?

A The residence of Brad Jacobson.

[5] Q And after you saw the document as you've described, could you tell us what if anything you then did?

A We then went to the area of the residence, and at that time a controlled delivery of a package was made by myself.

Q At approximately what time?

A 2:45.

Q And was that delivery made to the residence?

A Yes, it was.

Q Thereafter did you have occasion to return to the residence?

A Yes, approximately an hour later.

Q Would you have gone to the residence alone at that time or with someone else?

A There were other people involved, yes.

Q Could you give us some idea of the number?

A There were 4 around the house, I think one at each corner, and then there were about 4 or 5 behind me, both uniformed and plain clothes officers.

Q Are you aware who would have first approached the house at approximately 3:40?

A Myself.

Q And could you describe what you did at that time?

A I approached the front door with the original airway bill for the package that was controlled delivered [6] earlier along with my credentials.

I knocked on the door several times. Finally Mr. Jacobson answered the door. I have the airway bill over the credentials. He opened the door about 8 inches. It's a door that has no screen door. It's just a main door. I said to Mr. Jacobson, "I was here earlier and had you sign the wrong receipt," and then I pulled my credentials out and said, "Police."

Q What are you holding in your hand as you're testifying (indicating)?

A A badge of the Department of Justice, Drug Enforcement Administration, identifying myself as a special agent with that organization.

Q And what did you specifically—what is the badge attached to?

A A credential case.

Q And specifically what did you do if anything with that badge and credential case at the time that you confronted Mr. Jacobson as you've described?

A I showed it to him like this (indicating).

Q And what if anything did you say as you extended it toward him?

A Police.

Q What if any observation did you then make of Mr. Jacobson?

[7] A Mr. Jacobson slammed the door in my face breaking my glasses, knocking me off the porch.

At the same time I heard the pounding of feet on the stairs, and at the same time a shout, "It's the police. Flush it."

Q Could you tell us were you on the front steps with anyone at that time?

A No. The people, the 4 or 5 that were with me, behind me, were up against the front of the house back maybe 5-6 feet out of view of the door.

Q Could you tell us why you had gone to the front door at the time that you described?

A To execute the search warrant.

Q Could you tell us do you have a general method of approaching and entering a residence to execute a search warrant?

MR. PETERSON: Object to that as irrelevant.

THE COURT: Overruled.

THE WITNESS: Well, basically the execution of a search warrant, the most important thing is safety of the officers. We attempt to make entry into the place in the safest manner possible.

BY MR. LEE:

Q Do you have a custom as to whether or not you knock on a door at the time you attempt to execute a search warrant?

[8] A We always attempt to knock on the door, announce our presence and purpose.

Q In this instance did you follow your prescribed procedure?

A Yes.

Q And could you describe how specifically you followed the procedure?

A As I've testified, I knocked on the door, and when it was opened, I identified myself, and at that time I wasn't allowed to go much further.

Q What prevented you from doing so?

A Having the door slammed in my face.

Q Can you tell us after this occurred what if anything then occurred in connection with the search warrant?

A Several of the officers starting yelling, "Police," as did myself, "Open up."

When it was apparent that that wasn't going to happen, the sound of the running footsteps and so on, the door was kicked in.

Q What occurred then?

A We made entry into the residence. I personally went to the lower level of the house, and some of the officers followed me and some of the others went to the upper level of the house.

Q Could you tell us what if anything was done after the [9] officers and agents entered the house?

A We searched the house yelling, "Police," I think at every doorway, nook and cranny, looking for the occupants.

Q Could you tell us whether or not the search warrant was executed?

A Yes, it was.

MR. LEE: I would have no further questions of the witness at this time.

THE COURT: Do you want to cross examine, gentlemen?

CROSS-EXAMINATION

BY MR. GRAY:

Q Agent Lewis, when you arrived the first time at the Jacobson residence, you testified it was about 2:45 p.m.; is that correct?

A That's when I went to the door, yes.

Q And that was what you described as your "controlled delivery" of a package; is that right?

A That's right.

Q And at that time when you made that controlled delivery, did you do it under the disguise of a Federal Express agent?

MR. LEE: I'd object to the relevance for the purpose of this hearing.

[10] THE COURT: Sustained.

BY MR. GRAY:

Q The vehicle that you were driving the first time at the Jacobson residence was the same vehicle that you drove the second time there; is that right Agent Lewis?

A That's correct.

Q And the second time you were there, too, what you testified to, to execute the search warrant; you were at the front door in the same manner and same description and presence as you were in the first time; is that right?

MR. LEE: I'd object to the relevance of the question.

THE COURT: I'll overrule that.

(Pause.)

MR. GRAY: I'll rephrase it.

BY MR. GRAY:

Q Was there anything different the second time that you were at the Jacobson residence than the first time except that the first time you had a package?

A I was there to execute the search warrant.

Q Well, the search warrant was already issued at the first arrival there, was it not?

A That's correct.

Q Okay. Now, maybe you can answer me this: Was there anything different except for the package that you had [11] in your hand the second time that you were at the door? Did you look the same, number one?

A Yes.

Q And did you have the same vehicle out in front that you had the first time?

A Yes.

Q And you had the same air freight bill; is that right?

A That's correct.

Q And the door was open, is that right, when you knocked on it the second time?

A After repeatedly knocking, yes, it was opened.

Q What does "repeatedly" mean? How many times did you knock?

A Probably 8 times.

Q And all during this 8 times you knocked, you didn't say in any manner that you were the police and you were there to execute a search warrant, did you?

A No.

Q As I understand it, the door was opened you said 8 inches wide, is that right?

A (Witness nods head affirmatively.)

Q And at that point you testified that you told the man on the other side of the door, Mr. Jacobson, that you had to have him sign something else with respect to the air freight bill; is that right?

[12] A Yes, it was in the same sentence which was ended with, "Police," and showing him my credentials.

Q Agent Lewis, did you say that you wanted him to sign the air freight bill or not?

A That's correct.

Q And at the end of that sentence you said, "Police," is that right?

A That's correct.

Q The door slammed, is that right?

A That's correct.

Q And this door opens which way, out or in, in other words?

A In.

Q In? So your testimony is that you had your glasses broken in this incident; is that right?

A Yes.

Q If I understand it right, then when you said that you got an air freight bill to sign and you're saying, "police," you must have at the same time in a motion been entering the residence; is that right?

A No, I was leaning towards him to make sure he got a good look at my badge.

Q You were leaning towards him with your hands?

A One hand, yes.

Q All right. And how did it happen that your glasses got [13] broken then?

A As I was leaning—there was no screen door on the door.

Q All right. You testified to that.

A And I'm inside the line of the door frame like so (indicating), and I suppose the most forward part of my body would be the tips of my fingers and the corner of my head.

Q Well, did you hurt your hand any?

A No.

Q Well, perhaps I'll ask it again: When you said that you were there to have another freight bill signed, you were in one motion trying to enter the residence also?

A No.

Q Were you trying to lean forward and get inside the residence in any manner?

A No.

Q But notwithstanding that, your glasses broke when he shut the door; is that right?

A That's correct.

Q Is it possible not to have your body inside that doorway without—is that possible and not breaking your glasses?

MR. LEE: I'd object. The question is calling for speculation.

THE COURT: No, I'll let him answer.

[14] THE WITNESS: It was in my case.

BY MR. GRAY:

Q The door doesn't open both ways, does it?

A No.

Q It doesn't open this way this (indicating)?

A No.

Q And when the door is shut, it's shut; it doesn't have any give in it, does it?

A No, it didn't.

Q Okay.

(Pause.)

Do you have a copy of the indictment there, Agent Lewis?

A No.

Q Well, I'll show you this (indicating). I'll show you the second page of the indictment in connection with the overt acts and ask you to read to yourself the second overt act.

A Yes.

Q All right. Now, when the door was shut, there wasn't any statement like, "Police, flush it," was there?

A Not by me.

Q No, by anybody.

MR. LEE: I'd object to the question as lacking specificity as to time.

[15] MR. GRAY: Excuse me.

BY MR. GRAY:

Q When the door slammed in your face and your glasses were broken, you didn't hear anybody say, "Police, flush it," did you?

A Yes, I did.

Q At that point in time you heard that?

A Yes.

Q When the door was slammed in your face, did you testify that you ended up down on the—off of the sidewalk?

A No, I don't believe I did.

Q Well, where did you end up?

A The door stoop.

Q Pardon me?

A The door stoop. I was knocked back off the door stoop or step.

Q Were you knocked down?

A To the front of the house but to the side of the step.

Q And were you knocked down at that time?

A No.

Q Are those the same glasses you had on the day of this incident?

A No.

Q Going back to the original observation of the package that was delivered, were you involved in that, Agent [16] Lewis?

A Observation where?

MR. LEE: I'd object to the question as lacking specificity.

BY MR. GRAY:

Q All right. The Federal Express people notified the DEA or Drug Enforcement Administration about this package; isn't that right?

A That's correct.

Q And were you the one that they notified?

MR. LEE: I'd object to the relevance as to the no-knock issue.

MR. GRAY: If you want to recall him on the other matter, we'll do that.

THE COURT: Overruled.

BY MR. GRAY:

Q Were you the agent that was called by the Federal Express to go out and observe the package?

A Yes.

Q And at the time you called, where were you, Agent Lewis?

A My residence.

Q Okay. You weren't at the airport?

A No.

Q And who called you?

[17] A Edgar Davis.

Q Edgar Davis, and who is that?

A He is with Federal Express I think in their security department.

Q Okay. How did it happen that he got your name? Do you know?

MR. LEE: Your honor, I'd object to the line of inquiry in absence of some offer of proof.

I believe we have a search warrant here, and I believe the law is clear that the warrant if issued is to be examined within its four corners.

I think Mr. Gray is pursuing a line of inquiry that would apparently be intended to impeach the warrant, and in the absence of his satisfying the threshold requirement, I would object to this line of inquiry.

THE COURT: Sustained. There's no relevance to that question.

I believe the only issue here to go into is whether federal agents searched that package prior to the time it was delivered to the home.

MR. GRAY: All right, your honor.

BY MR. GRAY:

Q Where did you go first to observe the package? Where did you go? Was it the Federal Express Company?

A Minneapolis Airport, Federal Express.

[18] Q Minneapolis Airport. And at the time you were there, where was the package at in the airport?

A In their offices.

Q All right. And could you describe how that package was packaged?

A It was brown wrapping paper with an air bill on it, several fragile I believe stamped on the wrapping paper. The wrapping paper was over a cardboard box, oh, ten inches long, six by six; something like that, and there were newspapers inside, and then there was a oh, a duck tape tube maybe ten inches long inside, and inside that were I think four plastic Ziplock bags with the last one containing white powder.

Q And how did you find that out? Did you go through the package when you got there?

A No, it was already opened.

Q It was already opened, did you say?

A Yes.

Q Was it opened to the extent that you just described where all you had to do was walk in and look at the baggie with the white powder in it?

A Yes, it was when I got there.

Q In other words, when you went into the Federal Express Company, it was in plain sight; it was just laying out there; is that right?

[19] A I believe so.

Q Well, do you believe so or do you recall?

It's sort of important.

A I know the wrapping was in plain sight. The box was in plain sight. The newspaper was in plain sight, and the duck tape tube was in plain sight, and I remember seeing some plastic bags.

I don't remember whether white powder was right there in the that plastic bag or—

Q When you said that, do you mean that it was spread out all over a desk or something, that each thing was in a different department?

MR. LEE: I'd object to the form of the question.

It asks for the agent's observation.

BY MR. GRAY:

Q How did you observe this package? Do you remember?

A Setting on a desk opened up.

Q What do you mean by "opened up"?

A The wrapping was partially off. The box was exposed. The newspaper was exposed. The duck tape was exposed, and the plastic baggies were exposed.

Q Well, do you remember seeing a white powdery substance? Was that exposed?

A Yes, I saw it.

Q Okay.

[20] MR. GRAY: Do you have pictures of that, Mr. Lee? Do you have those photographs here?

MR. LEE: No, I believe that Mr. Hait took them with him on last Thursday.

BY MR. GRAY:

Q Did you take a photograph of the package as you originally saw it, Agent Lewis?

A No.

Q You didn't?

Did you take a photograph of the white powdery substance at any time during this investigation?

A I think we took a photograph of the plastic bag with white powder in it once we had taken the package back to our office.

Q Once you took the package back to your office?

A Yes.

Q When was that? After the execution of the search warrant?

A No, that was prior to the controlled delivery.

Q Oh. In other words, you took the package at Federal Express and you took that down to the DEA office; is that right?

A No, I took it to another office at the airport.

Q Pardon me?

A I took it to another office at the airport.

[21] Q Well, you said, "Down to our office." Is that the DEA's office?

A At the airport, that's correct.

Q Your own office at the airport?

A That's correct.

Q And who was with you when you did that?

A Jerry Kramer, Tom Olby and I think by that time Agent Tomseck had arrived.

Q Did you go through the package once you got it to your office?

A We repackaged it.

Q Who obtained the warrant?

MR. LEE: I'd object to the relevance.

BY MR. GRAY:

Q Well, was David Hait—excuse me. I'll withdraw the question.

Was David Hait involved in the investigation and obtaining the search warrant; is that correct?

A That's correct.

Q Okay. And I take it that Edgar Davis was an individual from Chicago; is that a fair statement?

A Yes.

Q And you never met him at the Federal Express Company here in Minneapolis; is that right?

A That's right.

[22] MR. LEE: Again I'd renew the objection to relevance.

BY MR. GRAY:

Q Who did you meet at the Federal Express office in Minneapolis when you first saw the package?

A The manager of the facility.

Q And who was that? Do you remember his name?

A I know his first name is Dan.

Q And where was the package when you first saw it?

A Oh, either his desk or it was on a desk in one of their offices.

I don't know whose office it was.

Q Did you just walk right in and you saw it there on a desk; is that correct?

A Yes.

Q Did you notice any damage on the package?

A Yes.

Q Where was the damage?

A The end of the box had been ripped. The wrapper, the brown wrapper, had been ripped, and the box also had been ripped.

MR. GRAY: I have no further questions.

CROSS-EXAMINATION

BY MR. PETERSON:

Q Agent Lewis, what type of vehicle were you driving when [23] you travelled to the Jacobson residence on May 12?

MR. LEE: I'd object to the question as to the nature of discovery.

THE COURT: Overruled.

THE WITNESS: A van.

BY MR. PETERSON:

Q Was it a DEA vehicle or Federal Express van?

A Neither.

Q What kind of van was it?

A State.

Q BCA van?

A That's correct.

Q And on both occasions when you travelled to the Jacobson residence on that day, that was the van you were driving?

A That's correct.

Q And I believe you testified that when you approached the door of the Jacobson residence the second time, no other agent was present with you at the door; is that correct?

A Well, they were 5 or 6 feet behind me, yes.

Q And how were you dressed when you approached the door?

A Blue pants, blue shirt, blue jacket.

Q Well, was it a Federal Express uniform?

A It was my own personal clothes.

Q Did it look like work clothes or did it look like casual [24] clothes?

(Pause.)

A Blue pants, blue shirt and blue jacket; I guess you could construe that as work clothes; my own personal clothing.

Q Well, your purpose in dressing in that fashion was to look like some type of delivery person; correct?

A Yes.

Q And when you had been there previous time and talked to Mrs. Jacobson, you had represented yourself to be a Federal Express employee; correct?

MR. LEE: I'd object to the relevance.

THE COURT: Overruled.

THE WITNESS: That incorrect. I just stated, "I've got a package here for Mr. Jacobson."

BY MR. PETERSON:

Q And asked her to sign something; correct?

A That's correct.

Q And when you approached the door the second time, the search warrant time, perhaps I missed it, but you had the bill of lading or some type of shipping document in one hand; is that correct?

A That's correct.

Q And your billfold containing your identification was not out at that time; is that correct?

[25] A Yes, it was.

Q In the same hand or in a different hand?

(Pause.)

A It was like this (indicating) only the bill of lading was larger (indicating).

MR. PETERSON: For the record you're indicating that your billfold containing the identification badge was held by you in your right hand and over the billfold, in other words, covering the badge was the bill of lading; is that correct?

THE WITNESS: That's correct.

BY MR. PETERSON:

Q Okay. When Mr. Jacobson answered the door, you were still holding the billfold and the bill of lading in the fashion that I just described; is that correct?

A That's correct.

Q And the first words that you said were that his wife had signed the wrong receipt and "would you please sign this," or something to that effect; is that correct?

A I said, "I think I got the wrong receipt signed. Police."

Q Okay.

MR. LEE: Could the record reflect what if anything Agent Lewis did with relation to the badge and air bill at that time?

BY MR. PETERSON:

[26] Q Agent Lewis, for the record, you've indicated that during the time you were saying what you just said, you moved your right hand forward removing the bill of lading from the cover of the badge and thereby showing the badge to Mr. Jacobson; correct?

A That's correct.

Q When you said, "I think I've got the wrong receipt," that was a lie, was it not?

A I didn't say that. I said, "I think I got the wrong receipt signed. Police."

Q Okay. When you said, "I think I've got the wrong receipt signed, police." That was a lie, was it not?

MR. LEE: I'd object to the relevance.

THE COURT: Sustained.

BY MR. PETERSON:

Q In terms of identifying yourself, all you said was the word, "Police," is that correct?

A That's correct.

Q You did not say you were a Federal Drug Enforcement Administration Agent; correct?

A No, I did not.

Q And you did not say that you were present to execute a search warrant; is that correct?

A No, I didn't have time.

Q But the answer to my question is yes, you did not say [27] that?

A That's correct.

Q By the way, the warrant which you had wasn't a no-knock warrant; is that correct?

MR. LEE: I'd object. The warrant I believe speaks for itself.

MR. PETERSON: I don't believe the warrant's in evidence.

MR. LEE: I offered it to his honor on Thursday. If we'd like to have it a formal exhibit, I would offer it as such.

THE COURT: I'm sorry. I did not realize it was part of the file.

(A discussion was held off the record.)

BY MR. PETERSON:

Q Agent Lewis, you testified that after the door was then slammed in your face that you heard footsteps inside; is that correct?

A Yes, running on stairs.

Q Running on the stairs?

A Yes.

Q And when you later searched the house, did you discern that the stairway to the second floor of the residence is carpeted?

A Yes.

[28] Q What type of shoes was Mr. Jacobson wearing on May 1st? Do you recall?

A No.

Q You then testified that you waited for what period of time before you kicked the door in?

A Well, we yelled, "Police. Open up," about twice and then we kicked the door in.

Q So we're talking in terms of 5 to 10 seconds; is that correct?

A Probably.

Q And this 5 to 10 second period would have been the period during which you heard the footsteps running; is that correct?

A Yeah, it was immediately after the door slammed and the, "Police, flush it." "It's the police. Flush it."

Q Now, going back to your previous involvement with the package at the airport, do you recall what time you arrived at the Federal Express Offices at the Minneapolis Airport?

A I think myself I arrived 10:15 to 10:30; somewhere right in there.

Q Were you with other agents at that time?

A Not when I arrived. There was already an agent there. I didn't arrive with him.

Q I see. Another agent was already at the Federal Express [29] Office?

A That's correct.

Q Who was that?

A Agent Kramer.

Q Was he in the office with the package at the time that you arrived?

A Yes.

Q Did you discuss what if anything he had done with the package prior to your arrival?

A Yes.

Q What did you discuss?

A He showed me the field test for the presence of cocaine which was positive.

Q What else did he tell you?

A What he had observed when he drove by the Jacobson's residence earlier that morning.

Q I mean relevant to the package?

A Oh, nothing really.

Q You said, "Nothing really"?

A I can't think of anything that was really discussed, no.

Q Would your report reflect it?

MR. LEE: I'd object to the relevance of that.

MR. PETERSON: I haven't asked for the report. I'm asking if his report would reflect it so that he can refresh his recollection.

[30] THE WITNESS: I don't think there's anything to reflect or refresh. We just didn't have a conversation.

BY MR. PETERSON:

Q So, to the best of your recollection, all that you discussed with Agent Kramer relative to his involvement with the package was that he had performed a field test which proved positive for cocaine?

A Yes.

Q He didn't tell you that he had conducted any other examination of the package?

A Other than it was open when he arrived and he'd tested the drugs.

Q Did he tell you that he opened it any further or in any other way altered the appearance or condition of the package?

A No, he hadn't.

Q After you arrived, what examination did you conduct of the package?

A I looked at it, looked at the airway bill, the way it was packaged, signed a receipt for it, and took it.

Q When you say you looked at the way it was packaged, did you do that physically or visually?

A Both.

Q Okay. What physical examination did you conduct of the package?

[31] A Picking it up and looking at it.

Q Did you physically enter the inside of the package with your hand or any other object?

A It was already opened.

Q That's not my question.

Did you go inside it?

A Well, again, the box is sitting there with it open, and the duck tape container was laying right there. I just reached over and picked it up.

Q Picked up the duck tape container or the package?

A Both.

Q So they remained together?

A Well, I separated them to look at both the airway bill and the package.

Q No, I'm talking about did you separate the duck tape—I take it the duck tape container contained the cocaine; is that correct?

A That's correct.

Q Did you remove the duck tape container from the package?

A Yes.

Q And you did that at the Federal Express Office?

A Yes.

Q And after you removed the duck tape container, that in turn contained four ziplock bags; is that correct?

A That's correct.

[32] Q And, therefore, in order to get to the cocaine which was in the innermost ziplock bag, you had to open four other ziplock bags; correct?

A Yes.

Q Now, the duck tape container which contained the ziplock baggies was a complete container to the extent that the duck tape went all around the ziplock baggies, did it not?

A That's correct.

Q So I take it that to get to the cocaine which was inside somehow that duck tape had to be separated or cut or however it happened; is that correct?

A Yes, it was already cut open when I got there.

Q It was already cut open?

A Yes.

Q Did you know who did that?

A Federal Express.

Q Did they tell you that?

A Yes.

Q Who told you that?

A One of the two people there, either the manager or the operations manager.

I don't remember which. They were both present.

Q What else did they tell you they had done to alter the condition of the package?

[33] MR. LEE: I'd object to the line of inquiry.

THE COURT: Overruled.

THE WITNESS: They said the package had been damaged in—I don't know—forklift or something on the belt, and normal company policy is to open it up to check for insurance problems or damage to the contents, and this is what they found.

BY MR. PETERSON:

Q Did they say what the extent of the damage was prior to their physically opening the package?

A I think they said the bottom of the box was crushed.

Q They didn't indicate that the box was opened in any fashion; is that correct?

A Yes. Apparently it had been the fork of a forklift that got the bottom of it.

Q And crushed it or opened it?

A Opened it somehow. That was the impression I got.

Q Am I gathering that you didn't particularly investigate any further as to how badly it was damaged when they first observed that it was damaged?

A No, we just had to repair the damage for the controlled delivery.

Q Did they tell you at what time they noticed the damaged package?

MR. LEE: I'd object to the relevance.

[34] THE COURT: Overruled.

THE WITNESS: Time?

MR. PETERSON: Time.

THE WITNESS: That morning.

BY MR. PETERSON:

Q And you testified I believe that they called you at your home at approximately was it 10 or 10:15 that morning; is that what you said?

A Nine.

Q Pardon?

A Nine.

Q And when they called you, I take it they had not yet opened the package; is that correct?

MR. LEE: I'd object to the question. It calls for speculation. Leading.

THE COURT: He can answer if he knows.

THE WITNESS: No, I was told they had opened it and found something of interest to us and called.

BY MR. PETERSON:

Q So it's your testimony that the package was not opened by them at your direction; is that correct?

A No, that's correct.

MR. GRAY: Pardon me. I didn't hear.

THE WITNESS: That's correct.

BY MR. PETERSON:

[35] Q Now, going back to your examination of the package, after you had removed the duck tape container within which the cocaine was packaged, what further examination did you conduct of the package at that time?

MR. LEE: I'd object to the question as a misstatement of the evidence, assuming and stating that the agents testified he removed the duck tape. I do not believe he so testified.

MR. PETERSON: I'll re-phrase it.

BY MR. PETERSON:

Q Agent Lewis, you testified that you removed the duck tape container from the package itself, did you not?

A I picked it up and looked at it, that's correct.

Q Okay. After you had done that, did you conduct any further examination of the container?

A At that time I did not.

Q At some later time did you?

A Yeah, at a later time we took a sample of the cocaine out and repackaged it.

Q Okay. This would be a sample in addition to the sample which Agent Kramer used for his field test; is that correct?

A That's correct.

Q When was the sample that you just mentioned removed?

A When I returned to my office with the package.

[36] Q The DEA airport office?

A That's correct.

Q And after that sample was removed, you put the package back together, so to speak; is that correct?

A That's correct.

Q And then subsequent to that, the controlled delivery was made?

A That's correct.

Q By the way, when was the first picture taken which would reflect the condition of the package on the day in question?

A After we returned to the office, our office.

Q The airport office?

A Yes.

Q And would that picture reflect the condition of the package before or after you repackaged it for the controlled delivery?

A Before.

Q Before?

A Yeah.

Q Okay. So that picture then with the exception of removing some of the cocaine and having taken the package apart and having put it back together would basically reflect the condition of the package at the time that you first observed it at the Federal Express Office?

[37] A I can't say about that. It's been awhile since I've seen that photo.

THE COURT: Gentlemen, may I interrupt? Is this gentleman who came in a witness who should be sequestered (indicating)?

MR. GRAY: No, your honor, he won't be a witness.

THE COURT: All right.

BY MR. PETERSON:

Q Now, just so the record is clear as to the various wrappings on the package, it's my understanding that the entire package itself was wrapped in the brown sort of wrapping paper; is that correct?

A Yeah.

MR. LEE: I'd ask for specificity as to what time we're talking about.

MR. PETERSON: Any time. I'm just talking about the various layers.

THE COURT: If you can answer.

THE WITNESS: The brown wrapping paper originally on the package was damaged by whatever happened at Federal Express, a belt or forklift or whatever. It was irreplaceable.

MR. PETERSON: I'm sorry.

THE WITNESS: It was irreplaceable.

[38] MR. PETERSON: Okay.

THE WITNESS: So we rewrapped it. The brown wrapping paper covered a cardboard box. The cardboard box was newspaper, duck tape and the dope.

MR. PETERSON: All right.

BY MR. PETERSON:

Q Did you retain the original brown wrapping paper that was on the package?

A Yes.

Q Okay. And that brown wrapping paper in addition had packing tape to secure the ends of the wrapping paper; is that correct?

A It was somehow affixed. I don't remember the particular type of tape.

Q Okay. Underneath the wrapping paper was the cardboard box?

A That's correct.

Q And underneath the cardboard box was duck tape which surrounded the newspaper; is that correct?

A No.

Q Okay. This was just newspaper and then there was the duck tape container; is that correct?

A Yes.

Q Then within the duck tape container were four baggies, ziplock baggies, the innermost of which contained the [39] cocaine?

A That's correct.

Q By the way, when you conducted the examinations of the package that you conducted at the airport, you didn't have a search warrant at that time; correct?

A No.

Q The only search warrant that you obtained for this package was the one where Agent Hait was the affiant, and it was to be executed subsequent to the controlled delivery; is that correct?

A Yes, it was a search warrant for the residence.

MR. PETERSON: I have nothing further.

THE COURT: How does Agent Kramer spell his name?

THE WITNESS: K-r-a-m-e-r.

THE COURT: Mr. Lee?

MR. LEE: Your Honor, I would have just a couple of questions.

REDIRECT EXAMINATION

BY MR. LEE:

Q Agent Lewis, I believe you've indicated that you signed a receipt at the Federal Express Office?

A That's correct.

Q And do you remember basically what that was a receipt for?

[40] A The package.

Q And who had asked you to sign a receipt?

A The manager along with the operations manager.

Q Did you ask for the package and its contents while you were at Federal Express?

(Pause.)

A Yes. I said we were going to take it.

MR. GRAY: Pardon me. I didn't hear you.

THE WITNESS: I think we said yes, we wanted it.

BY MR. LEE:

Q What if any statements had been made to you by the manager concerning the package prior to that time?

A It had been damaged, and it was pulled off the conveyor belt by some employee before it even got to the route truck, and that it was pulled off to inspect for damage to the contents; company policy.

Q Was any statement made concerning the observations of Federal Express of the contents of the package?

A Yes, they said they had found the white powder in there and figured it was drugs, and they called us.

MR. LEE: Thank you. I have no further questions.

MR. GRAY: I have a couple, your honor.

THE COURT: All right.

RE-CROSS-EXAMINATION

BY MR. GRAY:

[41] Q Agent Lewis, as I understand it then, Agent Kramer was the first Drug Enforcement Administration Officer that was at the scene of Federal Express at the airport; is that right?

A Yes.

Q And was he the first one, to your knowledge, that observed this package in the state it was in at the time the Federal Express turned it over to you?

A Yes.

Q Is Agent Kramer present today in the building here someplace?

A No.

Q Where is he?

A At a doctor's office.

Q He's unavailable to testify then; is that it?

A Yes he is.

Q Was there anything said, Agent Lewis, about a locker that the package was locked in to you?

A Not to me.

Q Do you recall Agent Kramer saying anything to you about where he obtained this package from?

A No.

Q As far as you know, then the package was on the desk when Agent Kramer arrived at the scene of Federal Express; is that it?

[42] A That's correct, with the manager and the operations manager sitting at the desk.

Q Okay. And based on your discussion with Agent Kramer, that's what you believe, is that right, that he didn't go obtain it from another place? It was on the desk when Kramer arrived?

A I don't know. We really didn't get into it.

Q Okay. So you don't know where he got it from; is that right?

A He got it from—

Q Wait. Do you know where he got it from?

A He told me he got it from the two gentlemen seated there in the office.

Q You don't know what condition it was in when he got it either, do you?

A I know it was open.

Q By "open", do you mean it was damaged at the bottom or it was opened and the cocaine or the white powdery substance was displayed in plain sight of Agent Kramer; which one, do you know?

A Well, let's go back to 9 o'clock that morning. I was already told there were drugs in the package when I received the phone call. I then called Agent Kramer at home and asked him to drive by Mr. Jacobson's residence and meet me at Federal Express.

[43] Q And Mr. Kramer arrived there ahead of you?

A That's correct.

Q And again you don't know what condition that package was in except that it was open at the time Agent Kramer arrived; isn't that right?

MR. LEE: Object to the question as having been previously asked and answered.

THE COURT: The reporter will read the last question, please.

(The pending question was read by the reporter.)

THE COURT: Sustained.

BY MR. GRAY:

Q Did you weigh this package at any time, Agent Lewis?

A Yes, after we took it to our office, Agent Tomseck and myself weighed the one plastic bag and the drugs on a scale.

Q Was this prior to the search warrant being issued for the residence?

A Yes, it was.

Q What did it weigh?

A Six and a half ounces.

Q Do you know where Agent Hait and the search warrant got four ounces?

A Yes, I do.

[44] MR. LEE: I'd object to the relevancy.

THE COURT: I'll overrule it. He's already answered.

BY MR. GRAY:

Q How did it happen that he put four ounces in the warrant, Agent Lewis?

A Because I estimated four ounces before I weighed it on the phone.

THE COURT: You say it was what on the scale?

THE WITNESS: 6.5.

BY MR. GRAY:

Q Well, was the search warrant made out prior to your weighing it?

A I advised Agent Hait of what had happened that morning, and I advised him prior to going downstairs and weighing the contents.

(Pause.)

(Defendant's Exhibit 1 marked for identification.)

BY MR. GRAY:

Q Agent Lewis, showing you what has been marked defendant's Exhibit 1, can you described that or can you identify that?

A It's a Federal Express airway bill.

Q Is that the same document that you used in having it [45] over your billfold with the badge on it?

A It's approximately the same size, although I don't believe this is the same form.

Q Well, I'm getting at size more than the form.

A Yes.

Q It's the same size?

A That's correct.

MR. LEE: I believe the question has been already asked and answered, and he said, "Approximately the same size."

THE COURT: Sustained.

MR. GRAY: All right. Your honor, we'll offer this into evidence as being the same size document that was over the badge.

MR. LEE: Your honor, there's no foundation for it being accepted in evidence as being the same size. The witness, who is the only foundation evidence available, has testified it's approximately.

THE COURT: Well, it's not offered to—as the exact way bill.

I'll receive it for being one of approximately the same size.

MR. GRAY: Okay.

BY MR. GRAY:

Q Now, Agent Lewis, would you take your badge and billfold [46] out again please. All right. And, as I understand it, you had it like that (indicating); is that it?

A That's correct.

Q You had your left hand on the back of the defendant's Exhibit 1, the air freight bill, and your right hand underneath with your badge; is that right?

A That's correct.

Q And after talking about the signature being wrong, how did you do it? You pulled back (indicating). I see. And at the same time you were moving in towards the door; is that right?

I see.

THE COURT: The records should reflect that the agent removed the way bill from his credential packet and extended the packet forward.

MR. GRAY: I have no further questions.

MR. PETERSON: Your honor, are we permitted to, through this witness, go into whatever arrangement there exists between the DEA and Federal Express relative to suspected contraband packages?

THE COURT: You can ask him if he's aware of any.

RE-CROSS-EXAMINATION

BY MR. PETERSON:

Q Agent Lewis, you testified that you first learned on the morning of May 1st at 9 a.m. that there were drugs [47] in the package that we're talking about?

A Yes.

Q And you learned that as a result of a phone call between yourself and Edgar Davis; is that correct?

A That's correct.

Q Are you aware of what relationship if any exists between Federal Express and the DEA relative to packages containing suspected contraband?

A Nationwide? Or what are you talking about; local?

Q Anything you know about I guess.

A We had stopped by their office twice before, as we have all carriers and air freight forwarders at the airport, as well as ticket agents, ticket supervisors and station manager, and told them that, "If in the normal course of your business you run across something strange, please give us a call."

Q Okay. When you say "we", you mean yourself or other agents of the DEA Minneapolis district office?

A No, airport and narcotic unit.

Q Of whom?

A The state and the DEA.

Q And how long ago was this done?

A About the first week of April.

Q Of this year?

A Yes.

[48] Q Is there anything contained within either the DEA files downstairs or the DEA/BCA airport narcotics unit which reflects in writing the nature of the relationship between the air carriers and so forth and the narcotic law enforcement officials?

MR. LEE: I'd object to the question in the nature of discovery.

THE COURT: I'll allow it. You may answer.

THE WITNESS: Other than Federal law, no, I don't know.

BY MR. PETERSON:

Q In other words, has the DEA or the BCA or anybody generated a memorandum, a letter, a contract, an agreement, an understanding, any sort of document which would either have been sent to Federal Express or other air carriers and so forth such as you mentioned or would have been received by the DEA/BCA, other law enforcement officials, relative to the arrangement that you described as having been in effect since April 1st of this year?

A No, there's no contract or anything like that, no.

Q Okay. Now, when you told Federal Express and other air travel agencies to notify you whenever they see something that is suspicious or that you might be interested in or whatever language we want to use, did you give them [49] any instructions as to what they should do with packages, for instance?

MR. LEE: I'd object to the form of the question in stating that the agent told them to do something. I do not believe it reflects prior testimony.

THE COURT: Sustained.

BY MR. PETERSON:

Q What was your prior testimony, Agent Lewis?

THE COURT: The court will rely on its own memory of what his prior testimony was. Let's move on.

MR. PETERSON: Your honor, I can't ask the question if the objection is sustained.

THE COURT: That's exactly right. Let's move on.

BY MR. PETERSON:

Q Agent Lewis, when you spoke to Federal Express or other air traffic agencies relative to suspicious packages, conduct or whatever, were they given any instructions in relation to dealing with suspect packages when they observed one?

A None other than in the normal course of their business, if they ran across something strange or something that is out of the ordinary, give us a call.

Q They were not instructed or requested what to do with suspect packages and so forth other than to notify you?

A That's correct?

[50] Q And they were not instructed not to do anything further with them until you were notified?

A The only thing we instructed about that was that if they had occasion to open one or if something burst open not to touch whatever's inside because it can be dangerous.

Q Were they instructed to open or not to open any packages that they observed?

MR. LEE: I'd object to the question as being awfully broad as to it would apply to any package.

THE COURT: Agent Lewis, have you yourself or to your knowledge has any other federal agent ever asked Federal Express Offices to open packages to look for narcotics or any other contraband?

THE WITNESS: No.

THE COURT: Move on, Mr. Peterson.

MR. PETERSON: Nothing further.

THE COURT: Any other questions of this witness?

MR. LEE: I have nothing further.

THE COURT: All right. You're excused, Agent Lewis. Do you want to notify the next witness? Does the government have any other witnesses?

MR. LEE: Your honor, the government would rest at this time.

MR. PETERSON: Your honor, could we have about a two minute recess?

[51] THE COURT: All right.

(A recess was taken.)

MR. LEE: Your honor, at this time I would offer what's been marked for identification as Government's Exhibit No. 1. I believe it to be a true copy of a search warrant with attached affidavit marked Government Exhibit No. 1.

THE COURT: All right. Government Exhibit 1 will be received.

(Government Exhibit 1 received in evidence.)

MR. LEE: Your honor, for the record, I would ask the court's permission to allow Agent Lewis to remain in the courtroom. He has I believe finished testifying.

THE COURT: All right. He may remain.

MR. GRAY: Your honor, the defendant Brad Jacobson will call Daniel Stegemoller to the stand.

(The witness was sworn.)

DANIEL STEGEMOLLER

was called as a witness on behalf of the defendant Brad Jacobson, being first duly sworn, was examined and testified as follows:

THE COURT: Would you spell your last name, please?

THE WITNESS: S-t-e-g-e-m-o-l-l-e-r.

[52] DIRECT EXAMINATION

BY MR. GRAY:

Q Mr. Stegemoller, are you presently employed?

A Yes, I am.

Q And where is that at?

A Federal Express.

Q How long have you been so employed?

A 6 years September.

Q And have you been employed 6 years in the Minneapolis office?

A No.

Q How long have you been employed in the Minneapolis office?

A It will be about 14 months.

Q And what's your title there?

A City manager.

Q What did you say? City manager? Is that what you said?

A Yes.

Q As city manager, do you have your own office?

A Yes, I do.

Q And where is that located?

A At the airport.

Q And are you the only one in this office, your own office?

A Yes.

Q And I take it that has a desk and a chair?

[53] A Exactly.

Q It's where you do your paperwork; is that correct?

A Unfortunately.

Q Now, directing your attention to May 2nd, I believe—first, May 1st, 1981, what time did you go to work that morning?

A Sometime between 7 and 7:30 I believe.

Q In the morning?

A Yes.

Q And when was the first time your attention was brought to this package which is an issue here?

Let's call in the "Brad Jacobson package," for lack of a better term.

A Between 7:30 and 8:30.

Q And who was the individual that brought your attention to that package?

A One of my supervisors.

Q This supervisor, is he under you, though; is that right?

A Yes, he is.

Q Did he bring the package to your office?

A No, at the time he brought it to my attention it was in his office.

Q Does he have an office similar to yours?

A Yes.

Q And where was the package when you first saw it in his [54] office?

A On his desk.

Q Was it open at that time?

A It was damaged?

Q As a result of the damage, could you tell what was in the package?

A No sir.

Q Did you then proceed to open it?

MR. LEE: Your honor, I'd object to this line of inquiry.

I believe it can only be offered to impeach the statements in the warrant, and I believe that again counsel

have a threshold burden, and I do not believe that they have sustained that.

THE COURT: Overruled.

MR. GRAY: Would you read the question back, please?

(The pending question was read by the reporter.)

THE WITNESS: No, I do not.

BY MR. GRAY:

Q Did your supervisor proceed to open it?

A Yes.

Q At your direction?

A Yes.

[55] Q Immediately upon you observing the package?

A Yes.

Q Did you make a phone call to this Edgar Davis prior to doing that?

A No.

Q After you opened the package—strike the question. Could you describe the package, how was it packaged?

A Okay. It was in a brown—the outer wrapping was a brown paper and a cardboard box. The inner part of it was newspaper, and there was about a 10 inch tube that was wrapped in gray tape.

Q And why don't you tell the court how the supervisor opened the package and what you observed.

A You mean what manner he opened the package?

Q Yes, and what you observed. Did he open the package completely?

A Yes, he did.

Q And did you observe anything in that package?

A I observed what was wrapped in a plastic bag, a white powdery substance.

Q All right. Did you conduct any tests on it yourself?

A No sir.

Q And after you observed this, did you then call Edgar Davis?

A Yes, I did.

[56] Q And Edgar Davis is the head of security in Chicago?

A He's the manager of security.

Q All right. Now, what did you do with the package after you made that phone call?

A I took it to my office and locked it in my file cabinet.

Q All right. When you took it to your office and locked it in your file cabinet, did you close it up? Did you put it back in the condition it was when you first observed it?

A No.

Q What did you do, just leave it all open?

A I believe I slid the plastic—rolled it back up and slid it back into the gray tape and just dropped it in the box and put it in the file cabinet.

Q Okay. Did you leave the newspaper out of it then?

A No, I put the newspaper back into the box then.

Q Well, the newspaper stayed in the box? I see. So did you put the top back on the box then?

A No.

Q Subsequent to that when you took the box out of the locker, you could not see without entering the box again the white substance; is that correct?

MR. LEE: I'd object to the form of the question. Leading. Suggestive.

[57] THE COURT: Mr. Reporter, would you read the question back, please?

(The pending question was read by the reporter.)

THE COURT: Well, I think his prior answers pretty much speak for themselves. He may answer. I believe the witness testified you put the plastic back with the powder back in the tape tube?

THE WITNESS: Yes.

THE COURT: Go ahead and answer. I think it's getting a little repetitious, though.

THE WITNESS: I'm sorry. Yes, I did, and no, you could not see it. I'm sorry.

BY MR. GRAY:

Q And I take it then that an Agent Kramer came to your office; is that correct?

A No.

Q It was another agent?

THE COURT: He is your witness and there has been a lot of leading. I think that you can proceed without leading the witness. I don't think there's any showing that he's been hostile.

BY MR. GRAY:

Q After you put the box in your locker, did a person who identified himself as a DEA agent arrive at your office?

[58] A Yes sir.

Q And do you remember that man's name?

A No.

Q Would "Kramer" refresh your memory?

A It could be. I'm sorry.

Q After he arrived at your office, what happened? What did you do and what did he do?

A I turned the package over to him. I had a receipt that I typed up myself that I was turning it over to the DEA, and he signed for the package.

Q Did he then go into the package himself in your presence?

A Yes, he did.

Q And in order to see the white substance, he had to go into the package and take it apart again; isn't that right?

MR. LEE: Again I would renew the objection as to the form of the question.

THE COURT: Sustained on leading.

BY MR. GRAY:

Q What did the agent have to do to observe the white powdery substance?

THE COURT: There's no showing he observed any white substance yet.

MR. GRAY: Okay. You're right, your honor.

BY MR. GRAY:

[59] Q At any time in your presence did the agent observe the white substance, the white powdery substance?

A Yes, he did.

Q All right. And this was after you turned over the package to him?

A Yes.

Q And what did he do to observe that, if you remember?

A I don't understand the question.

Q Well, how did he observe this white powdery substance?

A He looked at it.

Q All right. How did he happen to look at it?

What did he do?

A Took it out of the box I suppose.

Q All right. And this was after the receipt was signed, too; is that right?

A I can't remember exactly whether the receipt was signed first or afterwards. It's all part of our policy to have a receipt signed.

Q Did you make out a report in connection with this matter?

A Yes, I did.

Q And did you refresh your memory with respect to this matter by reading that report prior to testifying today?

MR. LEE: I'd object to the relevance. For the purposes of this hearing I do not believe such a report [60] would be disclosable.

MR. GRAY: It's my witness, your honor. I guess I can ask the witness.

BY MR. GRAY:

Q Do you have a report with you?

A No, I do not.

Q Is it here with Mr. Davis?

A I believe he has a copy.

Q Could you go out and get it?

A I don't know if he has the incident report with him.

MR. GRAY: It's not a government report, your honor. I think I could have it with my witness.

THE COURT: I believe he has called the witness. If the witness has made a report, you have a right to look at it.

MR. GRAY: Would you run out and see?

THE WITNESS: Okay.

(Pause.)

THE WITNESS: I don't know where he's at.

(A discussion was held off the record.)

MR. GRAY: Well, your honor, that's all the questions I have at this time. If there is a report, I might recall him after reading it since the man is not around.

[61] THE COURT: I don't recall, but did you say that you had read your report prior to testifying?

THE WITNESS: Yes, I had.

THE COURT: All right. Mr. Peterson, did you have any questions of the witness?

MR. PETERSON: No questions.

THE COURT: All right, Mr. Lee?

MR. LEE: Yes, a couple questions.

THE COURT: All right. Would you take the stand again, please (indicating).

THE WITNESS: Okay.

CROSS-EXAMINATION

BY MR. LEE:

Q Does the Federal Investigation Office in Minneapolis have a policy as to what if anything will be done when damaged packages are encountered in your handling of freight?

A Yes, sir, there is.

Q And could you describe the policy?

A The policy states that a package will be opened when it is damaged or when it is suspected to be damaged.

Q And does the Federal Express Office here at Minneapolis have a policy as to what is to be done if in inspecting a package it is suspected that it contains a drug substance?

[62] A Yes sir.

Q And what is that policy?

A The policy states that—I don't know the exact wording of the policy—but it states that if there is contents in the package that may be dangerous to our employees or of an illegal substance, that I am to contact my security department.

Q Calling your attention to May 1, 1981, did you have occasion to contact your security office?

A Yes, I did.

Q And what occasioned that contact? Why did you contact them?

A I had observed what I suspected as being an illegal substance.

Q Had you had any contact that day with the Drug Enforcement Agents or with any other police personnel prior to the time that you called your company security office?

A No, sir.

Q Did you make any contact with any police or DEA agents yourself on the morning of May 1, 1981?

A No, sir. "Contact" meaning telephone calls?

Q Telephone calls.

A No, sir.

MR. LEE: I would have no further questions of the witness at this time.

[63] THE COURT: Anything further?

MR. GRAY: No, your honor, except for the fact if he gets his report I'd like to review it.

THE COURT: All right. You can take a seat back there (indicating).

THE WITNESS: Thank you.

* * *

[2] MR. PETERSON: The defense calls Edgar Davis, your honor.

(The witness was sworn.)

THE COURT: Is Mr. Davis being called by you, Mr. Peterson?

MR. PETERSON: On behalf of both defendants, your honor.

[3] EDGAR J. DAVIS

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PETERSON:

Q Would you state your full name for the record, please?

A Edgar J. Davis.

Q Mr. Davis, by whom are you employed?

A Federal Express.

Q And how long have you been employed by Federal Express?

A Almost 2 years.

Q And in what capacity does Federal Express employ you?

A At the present time I'm the central region security manager.

Q And what is the nature of your responsibilities in that capacity?

A It varies. We're responsible for seeing that our stations adhere to corporate policies as relates to security of our packages.

Q You're testifying here pursuant to a subpoena duces tecum; is that correct?

A Yes.

Q Did you bring with you the records that I requested in that subpoena?

[4] A The gentleman over there has one (indicating).

Q Do you have the rest of the records that I requested?

A That's all we had. There's one other thing and you might want to look at that.

MR. STEGEMOLLER: Are you talking about the policy?

THE WITNESS: Yeah.

BY MR. PETERSON:

Q Mr. Davis, provided to me has been a Federal Express incident information report and a Federal Express field operations policy and procedure manual, page 14 or 22 pages of that manual apparently. Are those the documents that you brought with you today?

A That's what I brought.

Q Now, do you have a copy of my subpoena with you?

A Yeah.

(Pause.)

MR. PETERSON: Your honor, was the original subpoena filed with the court?

THE COURT: It wasn't filed with me. It may be in the clerk's office.

(Pause.)

(Defendant's Exhibit 2 marked for identification.)

BY MR. PETERSON:

[5] Q Mr. Davis, showing you a document which has been marked for identification as Defendant's Exhibit 2, would you examine it and tell me if that is a copy of the subpoena which was served upon you.

A Yes, it is.

MR. PETERSON: Offer Defendant's 2, your honor.

THE COURT: Mr. Lee?

MR. LEE: I'd object to it at this point. I believe there's lacking a showing of relevance. I believe the witness has produced certain documents, and at this point I don't see any need for the subpoena.

THE COURT: Well, I certainly see no need for it.

MR. PETERSON: The purpose, your honor, is to inquire as to whether he has produced all of the documents within the scope of the subpoena.

THE COURT: All right. It will be received for that purpose.

MR. PETERSON: Thank you.

(Defendant's Exhibit 2 received in evidence.)

BY MR. PETERSON:

Q Mr. Davis, have you produced all of the documents [6] which are enumerated or indicated by that subpoena?

(Pause.)

THE COURT: Is there a question?

MR. PETERSON: Yes, unless he answered it.

MR. LEE: Your honor, I would object. I don't believe there was a question. It seemed more of an observation I believe.

MR. PETERSON: I asked if Mr. Davis had produced all of the documents which are either enumerated in or indicated by the subpoena.

BY MR. PETERSON:

Q Have you given them to me?

A Yes, you have them there.

Q These are all the documents that would be within the scope of that subpoena?

A That's right. That's all we had.

Q "All we had" meaning Federal Express?

A Meaning the security department.

Q Are you indicating that Federal Express may have other documents which would come within the scope of that subpoena?

A No.

(Pause.)

THE COURT: Let's have the next question.

BY MR. PETERSON:

[7] Q Mr. Davis, relative to your involvement with this case, when did you first become involved?

A I was called. I don't recall the date.

Q May 1st?

A By Dan and—

Q Mr. Stegemoller?

A Mr. Stegemoller. He informed me that they had a package that had been damaged, and they had opened it to inspect the contents, which our policy calls for, and that they had found a substance that was suspicious, and I informed him to immediately contact the local Federal agency.

Q Did you give him any other instructions?

A No.

Q Did you do anything else at that point?

A Other than make a note on my note pad in my office, no.

Q Did you have any contact with any law enforcement officials at that time?

A No.

Q Did you have anything else to do with this case with the exception of looking for documents when you were subpoenaed?

A That's all.

MR. PETERSON: I have nothing further.

[8] DIRECT EXAMINATION

BY MR. GRAY:

Q Mr. Davis; is that correct?

A That's correct.

Q Is it your testimony that you did not call the Drug Enforcement Administration in connection with this matter, that Dan Stegemoller did?

A That's correct.

Q Do you have a recollection or will it show in one of these documents at what time in the morning Mr. Stegemoller called you? Would it say?

A No.

Q You said that you put a notation down on your desk with respect to this incident. Did that state the time that you called?

A No, I don't believe there's a time on there.

Q Okay. What time do you go to work in the morning?

A I'm usually there by 7.

Q All right. And that's Chicago?

A That's central standard time.

Q All right. Now, do you recall how long after you were there that morning that you were called by Mr. Stegemoller?

A No. It had to be in the morning because the district director came in that afternoon, and I mentioned it to [9] him that they had a package.

Q Showing you this report that you provided to Mr. Peterson as a result of a subpoena, was that report made out by an Ed Childers, do you know?

A Could have been.

Q It wasn't made out by you?

A No.

Q Okay.

MR. GRAY: I have no further questions.

MR. LEE: Your honor, for the record, I would suggest that the documents supplied by this witness to Mr.

Peterson be offered. I believe we do have the subpoena in evidence.

MR. PETERSON: Yes, I neglected to do that, your honor. Perhaps if we could have copies made and I would offer the copies.

THE COURT: I think that would be best. Well, I wonder, we could probably have the originals marked and then when the hearing is over make copies and give him his originals back.

(Defendants Exhibits 3 and 4 marked for identification.)

FURTHER DIRECT EXAMINATION

BY MR. PETERSON:

Q Mr. Davis, showing you what have been marked as [10] Defendant's Exhibits 3 and 4, would you examine them and identify them for the record, please?

A Exhibit 3 is a copy of Section 3 of our policy and procedural manual which governs the opening of packages. The Exhibit 4 is a copy of the incident reports which are sent to my office per my instructions from any station, and in this case the Minneapolis station.

Q And in addition attached to Exhibit 4 is a receipt signed by Agent Lewis apparently?

A Yes.

Q And in addition to that Exhibit 4 also has a card of Agent Lewis attached to it; is that correct?

A That's correct.

Q Do you know when the card was attached to that exhibit?

A No, I don't.

Q Okay.

MR. PETERSON: Your honor, I would offer Defendant's Exhibits 3 and 4 and agree that copies of the originals may be substituted for the court's file.

MR. LEE: No objection.

THE COURT: All right. Defense Exhibits No. 3 and 4 may be received and copies may be substituted at the conclusion of the hearing.

[11] (Defendant's Exhibits 3 and 4 received in evidence.)

CROSS EXAMINATION

BY MR. LEE:

Q Mr. Davis, are you familiar with the policy if any that Federal Express has when damaged packages are found to contain suspected contraband?

A There's no—when it's suspected of having contraband, our managers are instructed to call either the regional security manager, and if he's not—if he can't be located, they're to call Memphis, and they will receive their instructions as to what to do with that substance at that time. The reason I say "receive instructions" is because some of our stations are not located on airport property. Therefore, we'd have to determine what jurisdiction they're in and in turn instruct them to contact that particular authority.

Q Do you recall on or about May 1st, 1981, speaking to any Drug Enforcement Agent either personally or by phone regarding this incident?

A At the time that that occurred, no.

Q You didn't make a report of your activities on that day in any detail; is that correct?

A No.

[12] Q Could it have been possible that you would have spoken to one or more agents on or about that date?

MR. PETERSON: Object to that as speculative.

THE COURT: You may answer.

THE WITNESS: I'll put it like this: If the contents as described to me over the phone would have warranted me talking to them, I would have.

BY MR. LEE:

Q That's standard practice or policy to contact the

drug agents when the suspected contents is a drug substance?

A That's right.

Q Do you generally adhere to that policy when you receive such a call?

A We do.

Q And what is the practice, if you can be more specific, when a manager notifies you that he suspects he has drug substances on his hands?

A Since we don't have the authority to dispose of illicit material, we contact either—if it's on an airport facility, we contact the local DEA. If it's on a—one of our stations located within a town or city or within a county, we contact the local narcotics people.

[13] Q Now, when you say "we" do you then mean your office of security?

A No, no. To cut down on the number of people involved, I merely instruct the station manager to call the local—either the federal agency or the local county or local police to take care of that.

Q Prior to coming to court here today and subsequent to early May 1, 1981, had you had occasion to speak with any drug agents about this investigation?

A No.

Q By phone?

A No.

Q Okay.

MR. LEE: I would have no further questions of the witness at this time.

REDIRECT EXAMINATION

BY MR. PETERSON:

Q Mr. Davis, if you had spoken to either a DEA agent or some other law enforcement agent relative to this matter on May 1st, 1981, as part of your policy and practice, you likely would have made a report to that effect, would you not?

A If it was just a casual conversation over an issue that they were concerned about, I wouldn't have. If it was something that had to do with a package out of [14] a station, yes, I would have.

Q In other words, if you learned that a package containing suspected contraband had been located either at an airport or at a station, and you had contacted the DEA relative to that package, likewise you would have prepared a report about it; correct?

MR. LEE: I'd object to the question as leading, argumentative. I believe he's in substance answered the question previously.

THE COURT: I'll allow the question.

(Pause.)

THE WITNESS: Would you rephrase that or ask that again, please?

MR. PETERSON: I think I'll just withdraw the question. I have nothing further.

MR. GRAY: I have nothing further of this witness. I do have a couple of questions of Mr. Stegemoller.

THE COURT: All right. You're excused. Thank you.

THE WITNESS: Thank you.

(The witness was excused.)

MR. GRAY: Your honor, after reviewing the reports, may I recall Mr. Stegemoller for a couple of questions?

[15] THE COURT: All right.

(The witness was previously sworn.)

DANIEL STEGEMOLLER

recalled as a witness by defendant Brad Jacobson, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GRAY:

Q Showing you what has been marked as Defendant's Exhibit 4, Mr. Stegemoller, do you recognize the hand printing or writing on that document?

A Yes, I do.

Q And whose is that?

A That's my supervisor.

Q That's your supervisor, Ed Childers?

A Yes, it is.

Q And directing your attention to the bottom of that document, it states as follows: "Call DEA and corporate security; package tendered to DEA at 10:35 to Special Agent Lewis"; do you see that?

A Yes, I do.

Q And does that mean that Ed Childers called the DEA?

MR. LEE: I'd object. Lack of foundation for this witness to know.

THE COURT: Well, I'm going to allow the [16] question because apparently there's some confusion on who did call the DEA, and I'd just as soon find out who it was.

THE WITNESS: Okay. I did not call the DEA. It was my supervisor.

BY MR. GRAY:

Q Were you present when your supervisor called the DEA?

A Yes, sir.

Q You were?

A Yes.

Q What time did he call the DEA?

A It says on here at 10:35.

Q No, it says, "tendered to DEA at 10:35 to Special Agent Jim Lewis." If you read it correctly, you'd see

that that's the time he turned the package over. You see that?

A Right.

Q You didn't turn the package over to Mr. Kramer, you turned it over to Mr. Lewis; isn't that right?

A Yes, Mr. Kramer was with Mr. Lewis at the time.

Q Well, do you have a specific recollection as to whether or not you called the DEA, this James Lewis, before or after, and I don't mean you, I mean Ed Childers, in your presence, before or after the package was opened by you and Mr. Childers or by Mr. Childers?

[17] A It was after.

Q Do you specifically recall that?

A Yes, sir.

Q Who told you to call Mr. Lewis?

A I was not told to call Mr. Lewis. I was told to call the DEA by Edgar Davis.

Q Pardon me?

A By Edgar Davis.

Q Is there any message to you or is there any indication to you which one you called first, Edgar Davis, or the DEA when you put in the bottom of this document, "Call DEA and corporate security," it seems to me it looks like the DEA was called before corporate security.

MR. LEE: Your honor, I'd object to the question as being previously asked and answered and argumentative.

THE COURT: Sustained on the grounds it's argumentative.

BY MR. GRAY:

Q Did Ed Childers make out this report in your presence?

A Yes, he did.

Q Did you assist him with it?

A Yes, I did.

Q And at what time did you make the report out;
[18] immediately after the incident?

A Before 10:35 is all I can recollect.

Q You have on the document it says, "Time of incident 8:30"; is that right?

A Yes, I do.

Q Does that mean the incident with respect to opening the package?

A Yes.

MR. GRAY: I have no further questions.

MR. PETERSON: A couple, yeah.

DIRECT EXAMINATION

BY MR. PETERSON:

Q Mr. Stegemoller, I guess I'm a little unclear. The first DEA agent you saw on May 1st was not Agent Lewis; is that correct?

A That's correct.

Q And the first agent that you saw on that day had examined the contents of the package prior to Agent Lewis' arrival; is that correct?

A I believe so.

Q And at the time that the other agent arrived at your office, the package itself had been put back together so the contents of the package were not visible; is that correct?

A They were not visible.

[19] Q And upon his arrival, you turned custody of the package over to the first agent which arrived; is that correct?

A Yes, sir.

Q And then he examined the contents of the package in your presence; is that correct?

A Yes.

MR. PETERSON: Nothing further.

THE COURT Mr. Lee?

CROSS EXAMINATION

BY MR. LEE:

Q Well, is it true that prior to the time you turned the package over to the first agent that arrived, it had not been closed or repackaged in any way?

MR. PETERSON: I object to that as a double question.

BY MR. LEE:

Q Well, after you opened the package and inspected its contents, was the package closed in total?

A No, sir.

MR. PETERSON: I object to that as lacking specificity. It's also repetitious.

BY MR. LEE:

Q After you examined the contents of the package, what, if anything, did you do with it as respects closing [20] it?

MR. PETERSON: Object to that as repetitious.

THE COURT: Overruled.

THE WITNESS: I believe the plastic bags were rolled up, slid into the gray tube, and it was placed into the container.

Q Anything else?

A No, sir.

MR. LEE: I have nothing further.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. PETERSON:

Q Mr. Stegemoller, did you not testify previously that in addition to that the newspaper was put back in the cardboard box?

A No. I testified that the paper had not been taken out of the box.

Q It was just a duct tape tube itself that had been removed from the box?

A Yes.

Q Okay. And you had removed the ziplock baggies from the duct tape tube?

A I don't know what kind of baggies they were, but, yes.

Q And prior to the arrival of the agents, you had rolled out the plastic baggies again, put them back in the [21] duct tape tube, put the duct tape tube back in the cardboard box; is that correct?

A I'd like to make a clarification. When I say that I put it back into the tube, I didn't necessarily mean that I sealed the tube back up. I did slide the plastic bags back into the container and placed the container in the box.

Q Okay. And what did you do with the exterior of the box?

A Nothing.

Q But there's no question about the fact that you could not see—well, let me ask it this way: If the box were sitting in front of you on the table, could you see the duct tape tube?

MR. LEE: I'd object to the question as to relevance.

THE COURT: Overruled, but I believe he's already answered it. You may answer it again.

THE WITNESS: Yeah, I believe you could see the box had not been closed back up. It had just been laid back into the box.

BY MR. PETERSON:

Q. But you could not see the baggies within the duct tape tube; is that correct?

MR. LEE: Object to the form of the question. [22] Leading and suggestive.

THE COURT: It is, but maybe it will be the last one. You may answer.

THE WITNESS: I believe you could.

MR. PETERSON: Nothing further.

MR. LEE: I have nothing further.

THE COURT: All right. You may be excused.
Thank you.

(The witness was excused.)

[17] TRIAL TESTIMONY OF JAMES L. LEWIS
DIRECT EXAMINATION

* * * *

Q And you are a federal law enforcement officer?

A That's correct.

Q Going to May 1st of 1981 specifically, did you have any contact with a business named Federal Express on that date?

A Yes.

Q At what time was your first contact with them?

A At approximately 9:00 in the morning I believe received a message at home via a pager to call a gentleman with Federal Express by the name of Edgar Davis in Chicago, Illinois.

Q Did you call Mr. Davis in response then?

A Yes, I did.

Q Once you had called Mr. Davis, without saying what he told you, did you contact any other Drug Enforcement agents in the Twin Cities area here?

A Yes, I did.

Q Who did you contact?

A Jerry Kramer.

[18] Q And did you give him any instructions?

A Yes, I advised him of what I had learned from Mr. Davis.

Q Did you ask him what to do in response to what you had learned?

A Yes.

Q What did you tell him to do?

A I asked him to drive by an address in Apple Valley, Minnesota, being 7300 West 130th Street.

Q About what time was it that you telephoned Agent Kramer?

A Approximately 10 after 9:00, 9:15 in the morning.

Q Did you yourself then go anywhere in response to this situation?

A Yes, I did.

Q Where did you go?

A I went to the Federal Express facility at the Minneapolis-St. Paul International Airport.

Q And once you got there were there some Federal Express officials there?

A Yes.

Q Who was it that you dealt with there?

A The manager, Dan Stegemoller, I believe is how it's pronounced.

Q Do you know how to spell that?

[19] A No.

Q Would it be S-t-e-g-m-o-e-l-l-e-r, or approximately that?

A Yes. The other gentleman I think was the operations manager, Ed Childers.

Q C-h-i-l-d-e-r-s?

A Yes, I believe so.

Q Did they show you anything?

A When I walked into their office, and I don't know exactly which one's office it was, there was a box setting on the desk.

Q What kind of a box?

A Cardboard covered with brown wrapping paper.

Q Was it opened at the time you first observed it?

A Yes, it was.

Q Can you describe the box in more detail, its approximate size, the description of the wrapping?

A It was about 10 by 6 by 10 with brown wrapping paper.

Q Was there any labeling on the wrapping?

A Yes, there was an airway bill affixed, as well as several, I think some type of Federal Express priority

one package stamp and some fragile stickers had been affixed to the wrapping.

Q Was it addressed to any particular person or [20] address?

A Yes.

Q Can you tell us what that person's name was and what the address was?

A The airway bill had the consignee as B. Jacobs with an address of 7300 West 130th Street, Apple Valley, Minnesota.

Q Did the box itself, from your examination of it, appear to have any damage to it?

A Yes.

Q What did it look like?

A The lower end or one end, the opposite end of the one that was opened, had been slashed or gouged, or something. It was ripped on that end.

Q Did you examine the contents of the box?

A Yes.

Q What did you see inside during your examination?

A Well, the box was open when I walked into the office. There was newspaper, wadded-up newspaper in the box along with about a 10-inch tube of duct tape, this silver tape you see in the basement on ducts to seal the duct together, tape about that wide (indicating), and it was wrapped around and around into a tube about 10 inches long, probably about, oh, two and a half inches in diameter.

THE COURT: How wide was the tape, did you say?

[21] THE WITNESS: The tape was I think, oh, inch and a half width normally.

The tube had been slit open on one end and sticking out of the slit was some rolled-up plastic bags and you could see white, something white contained in the plastic bags.

BY MS. SYMCHYCH:

Q Did you pull out the plastic bags and further look at what the contents were?

A Yes, I believe so at that time.

Q What did you see when you did that?

A Well, I observed that contained within the plastic bags that had been inserted in the duct tape was a white powder.

Q Was the white powder contained in a single plastic bag inside the tube?

A No, I believe there were four. The white powder being in one bag, then that bag put in another bag, then another bag, and then finally the fourth.

Q When you got to the Federal Express office was there anyone else there other than Mr. Stegemoller, Mr. Childers and yourself?

A Yes.

Q Who else was there?

A Jerry Kramer.

[22] Q Now, once you had made this examination of the box and its contents, did you then leave the package and its contents with the Federal Express people?

A No.

Q What did you do?

A I took it.

Q Where did you take it?

A I took it to our small office at the airport.

Q Did you take the box itself?

A Everything.

Q You took the original wrapping, did you?

A Yes.

Q And the newspaper inside?

A Yes.

Q The duct tape?

A Yes.

Q And the plastic bag containing the white powder?

A Yes.

Q I am going to show you now what has been marked for identification on a yellow tag with Government's Exhibit No. 2, and ask you to examine the exhibit and tell us whether you recognize it.

A This is the original box that I saw on that morning in Federal Express minus the brown paper wrapping that was on it at that time.

[23] Q Can you tell from an examination of the box, and specifically for the damage that you saw on the morning of May 1st of 1981, whether it's exactly the same box?

A Yes. This end was open when I arrived there and this end of the box right in this area had been slashed and ripped, as you can tell from the inside of the box, and we repaired this rip in the box with this tape that I put on, as well as this one strip of sticky tape on the inside.

MS. SYMCHYCH: Government offers Exhibit No. 2, Your Honor.

(Government's Exhibit 2 offered in evidence.)

MR. PETERSON: May I inquire, Your Honor?

THE COURT: Sure.

MR. PETERSON: Agent Lewis, has the appearance of the box from the first time that you saw it changed in any way other than repairing the hole, adding the tape that you added and adding the DEA evidence tag, the tag that I am holding up now, and the exhibit label?

THE WITNESS: Well, when I first observed it it had brown wrapping paper on it. So I didn't really see the outside of the box until I broke it down and took the wrapping paper off and made that repair. So it's the same except for our evidence stickers.

MR. PETERSON: There appears to be some other [24] writing on the box. That wasn't added by you or other law enforcement officials?

THE WITNESS: No. Some place on there are my initials and the date, but other than that, no.

MR. PETERSON: I have no objection.

MR. GRAY: I have no questions at this time, Your Honor. No objection.

THE COURT: There being no objection, Government's Exhibit 2 is received.

(Government's Exhibit 2 received in evidence.)

MS. SYMCHYCH: May I pass it also to the jury, Your Honor.

THE COURT: Yes.

BY MS. SYMCHYCH:

Q Agent Lewis, did you retain the original packaging which you took off Government's Exhibit No. 2?

A Yes.

Q I am going to show you what has now been marked for identification as Government's Exhibit No. 3, and ask you if you recognize the exhibit?

A Yes, this is the original wrapping from the box.

Q What is it that causes you to recognize it as the original wrapping from the box?

A Well, the various stickers on it, plus the rip over here where it was damaged, and my initials and date.

[25] Q At the time that you first observed the original wrapping did it have a designation of name and address on it?

A Yes.

Q Where was that located on the original wrapping?

A About a 5 by 8 multi-sheet airway bill that slips into this plastic see-through.

Q That's not there right now, is it?

A No, it isn't.

Q You removed it, did you?

A Yes, I did.

Q Other than that is the original packaging in the same condition as it was when you saw it on May 1st of 1981?

A Yes.

MS. SYMCHYCH: Government offers Exhibit No. 3, Your Honor.

MR. GRAY: I have no objection, Your Honor.

MR. PETERSON: No objection.

THE COURT: All right, Government's Exhibit 3 is received.

(Government's Exhibit 3 offered and received in evidence.)

. . . .

[29] Q Agent Lewis, when you got back to your office were there any other Drug Enforcement agents in your company?

A Yes, Jerry Kramer was with me and Tom Olby, a narcotics agent for the State of Minnesota.

Q Once you got back to your office did you further examine the package at all?

A Yes.

Q Did you do anything to determine the weight of the contents?

A Yes. We took the plastic bags out of the duct tape tube and weighed them.

Q Who weighed them?

A I did.

Q Where was the scale that you weighed them on?

A Agent Tomcik, who had arrived after we got to our office at the airport, accompanied me down to the airport police department where we weighed them on a postal scale.

Q What weight did the white powder substance in the four plastic bags turn out to be?

[30] MR. GRAY: Object to this as lack of foundation, Your Honor.

THE COURT: What foundation do you want?

MR. GRAY: With respect to the postal scale, if it was accurate, verified. Did they verify the accuracy of the postal scale beforehand? We are dealing with a small amount, Your Honor.

THE COURT: Want to ask some questions along that line?

BY MS. SYMCHYCH:

Q Agent Lewis, did you take any steps to test the accuracy of the postal scale upon which you weighed the substance?

A It was set on zero and—

MR. GRAY: Object to this as not responsive, Your Honor.

THE COURT: I think it's responsive. You can go ahead.

A The needle was set on zero and we pushed it down a couple of times to make sure it was operable. We did not take a one-ounce weight and test the accuracy of it.

BY MS. SYMCHYCH:

Q During your experience as a Drug Enforcement office have you had the opportunity to weigh powdery substances?

[31] A Yes.

Q On about how many occasions?

A Hundreds.

Q And have you had the opportunity to weigh powdery substances of a similar quantity to the subject which you weighed on May 1, 1981?

A Yes.

Q Have you had the opportunity additionally to weigh powdery substances that were similarly packaged?

A Yes.

Q To the one that was weighed on May 1st of 1981?

A Yes.

Q Following your weighing of the four plastic baggies and the powdery substance on May 1st of 1981, was the result consistent with results you had previously obtained in your experience in weighing similar substances?

A Yes.

Q Could you now tell us what the weight was of the powdery substance included in the four plastic baggies that you weighed on May 1st of 1981?

MR. GRAY: Same objection, Your Honor. May I ask a couple of questions along that line?

THE COURT: All right.

MR. GRAY: Agent Lewis, the search warrant in this case, was it issued after the weighing of the substance?

[32] THE WITNESS: It was issued—meaning by “issued,” signed by the Judge—after the weighing of the substance.

MR. GRAY: I notice in the search warrant that the amount—well, I will show it to you. The amount in the search warrant that was to be searched at this residence is different than the amount in the complaint, is that right?

THE WITNESS: That's correct.

THE COURT: Say that again, would you, please.

MR. GRAY: The amount stated in the search w[a]rrant that was issued after the substance was weighed is different than the amount that was in the complaint issued later, Your Honor. As a matter of fact, the amount in the search warrant is—

MS. SYMCHYCH: Objection, Your Honor. It calls for hearsay.

THE COURT: Yes, I think we can stop there.

MR. GRAY: Your Honor, I have an objection, lack of foundation, with respect to the weight of this substance.

THE COURT: I think with the foundation that was laid by counsel, that I am going to overrule the objection and that the answer may be given.

BY MS. SYMCHYCH:

Q Agent Lewis, will you please tell the jury what [33] the result was when you weighed the white powdery substance in the four plastic bags?

A Six and a half to seven ounces.

Q Now, following your weighing of that substance did you remove any of the substance from the baggies?

A Yes.

Q I'd like you, if you would, to describe to the jury in more detail what this white powder looked like; just a visual description now.

A Sugar.

Q Was it consistently granular, with little granules of all the same size?

A No.

Q Can you describe then for the jury what it looked like in terms of its granular consistency or inconsistency?

A It kind of looked like sugar that had been damp. It was, some of it, chunky.

Q When you removed a portion from the plastic bag of white powder can you describe to the jury what the portion looked like that you removed?

A It was a small amount that I poured out of the bag into an evidence bag; oh, 10, 12 grams of white powder.

MR. GRAY: I am sorry, I didn't hear that, when he said 10 or 12—

THE COURT: "Grams of white powder."

* * * *

TRIAL TESTIMONY OF JERRY KRAMER DIRECT EXAMINATION

* * * *

[155] Q After doing that where did you go?

A I drove to the Federal Express office on 34th at the west side of the airport.

Q Where did you go at the Federal Express office?

A Into the city manager's office.

Q Do you recall his name?

A I believe it was Ed something. I'm not sure. Ed or Dan something.

Q How many people did you meet with there?

A There were two men.

Q Ed Childers and Dan Stegemoller?

A That sounds familiar. I believe those were the men.

Q Were there any other narcotics or Drug Enforcement agents there when you met with Stegemoller and Childers?

A No.

Q About what time was that?

A I probably arrived there at approximately 10:00 or shortly thereafter.

Q Did you go into a small office area there?

A Yes.

[156] Q Was there anything there that they showed you?

A Yes, a box on the table or desk.

Q Describe it as you saw it right when you walked in.

A The box was centered on the desk. The top was open and a hole punched in the side of the box.

Q Was there wrapping on the box designating a place where it was supposed to travel to?

A Yes, the outer brown paper wrapping was still around the box.

Q Did that have any damage to it?

A Well, a hole punched in the side and then the top had been opened.

Q Now you say that the top had been opened. Were you then able to view what the contents of the box were?

A As I got closer to it, yes.

Q What did you see inside the box as you examined it?

A There was wadded-up pages of newspaper.

Q Did you look further into the contents of the box?

A Yes.

Q Describe the entire contents as you examined them, what you saw.

[157] A There was a, probably five or six wadded-up pieces of newspaper as packing, and then there was a tube formed by duct, d-u-c-t, tape approximately 10 inches long and sort of the shape of a football, the entire length of that duct tape tube. Then there was

strapping tape wrapped around that and one end of the tube had been slit open.

Q Did you see what was inside the tube?

A After I pulled the plastic bags out I did.

Q Describe to the jury what you found inside the duct tape tube.

A There was clear plastic bags, a total of four of them, each one wrapped inside the other, and then the fourth bag contained the white powder.

Q Now, can you describe to the jury exactly how the bags were contained within one another and how they were either folded or wrapped?

A Yes. The one containing the white powder, the bottom portion was filled with the white powder and then had been folled and sealed at one end. Then that had been placed inside another plastic bag and that had been rolled and sealed, and so on, until the fourth bag contained the other three.

Q Now, once you observed that there was a white powder inside that innermost bag, did you conduct any type [158] of preliminary test on it?

A Yes, I brought what are known as field testers into the office with me and I used a Scott reagent field test to test for cocaine.

Q Is there some type of visible thing that happens when you use that field test?

A Yes, it's a three-step process, three tubes, and the color changes on each of the three stages if it's a positive test for cocaine.

Q It's just a screening test, is it not?

A Correct. It's a field test for agents.

Q Now you have used that on prior occasions and in other investigations, have you?

A Yes.

Q When you applied the field test to the white powder substance that was in the package, tell the jury what you saw.

A The results of the total test or each stage of it?

Q Well, if you can summarize it without getting overly elaborate about it.

A Well, the end result was positive. Pink over blue indicated presence of cocaine.

Q Was Special Agent Lewis there at the time that you field tested the material?

[159] A No.

Q Did you show him the results of the field test?

A Yes.

Q About how much later?

A I conducted the field test at approximately 10:15 and approximately 10:30 Agent Lewis and Olby arrived and I showed them the field test.

Q Now I am going to show you what have been received as Government's Exhibits 2 and 3 in this matter, and ask you if after an examination of them you can state whether or not they are the same box and packaging that you observed in the Federal Express office on May 1st of 1981?

A Yes, they are.

Q Now, is the location of the damage to the box and the packaging that you described evident on those two exhibits?

A Yes.

Q If you can, can you point out to the jury in a way that they can see where it is?

A Yes. When I first saw the box it was setting on a desk like this, and the hole had been punched in the side here.

Q Was that tape on top of the hole there then?

A No, it was added later.

[160] Q Then is there damage on the corresponding spot on the original packaging?

A Apparently on this side here.

Q On the ripped side?

A Yes.

Q Now, after field testing and getting a positive result for the presence of cocaine, did you make a decision

about what you would do with these materials that were in the Federal Express office?

A Yes.

Q What did you decide to do?

A First, Agent Lewis signed a receipt for the box and contents and gave that to Federal Express. Then we proceeded over to the airport.

Q Where did you go in the airport?

A To the airport detail office, also known as BCA office in the main terminal.

Q Once you got to the airport office did you have another opportunity to look at the white powder substance?

A Yes.

Q Do you know if any of that material was removed for sending to the DEA lab in Chicago?

A Yes, I was there when a sample was removed and placed in an evidence envelope.

[161] Q Was the sample removed directly from the substance that you had taken from Federal Express?

A Yes.

Q And was it packaged up and sealed up right in your presence?

A Yes, it was.

Q Were you present when the remaining white powder substance was weighed?

A No, not when it was weighed.

Q Did you participate in the repackaging of the plastic bag with the white substance inside, then the duct tape tube and the newspaper and the box?

A Yes.

Q Did you actually participate in that repackaging?

A Yes, I did.

Q Was it packed in substantially the same manner that you had observed it when you first got to the Federal Express office?

A Yes, even to the point of I stamped "fragile" on the seams several places on the packing.

Q Now, did you use this original wrapping Exhibit No. 2 in repackaging?

A No, we replaced the outer wrapping. That is the original box and wrapping, and we changed the outer wrapping.

.

CROSS-EXAMINATION

.

[199] Q The field test that you performed, was that performed on the substance while it was still within the plastic baggie, or did you remove some to perform your field test?

A I took a knife blade and removed a small amount out of the baggie to put in the test.

Q So it would be something less than a gram that you removed?

A Oh, yes. It was a trace amount.

Q Where did you put the amount that you removed?

A In the test kit.

SUPREME COURT OF THE UNITED STATES

No. 82-1167

UNITED STATES, PETITIONER

v.

BRADLEY THOMAS JACOBSEN and
DONNA MARIE JACOBSEN

ORDER ALLOWING CERTIORARI

Filed March 7, 1983

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted.